

## Sec. 69 addition rightly deleted as revenue failed to prove that assessee had made undisclosed investment in flat

**Summary – The High Court of Gujarat in a recent case of Bharat A. Mehta, (the Assessee) held that Section 69 addition rightly deleted as revenue failed to prove that assessee had made undisclosed investment in flat**

### Facts

- A search was carried out at the residential premises of the partners of a firm engaged in development of bungalows under the scheme 'Tulip'. During the proceedings, the said persons admitted to have received 'on money' while selling bungalows in the said scheme and disclosed certain amount on account of 'on money' received and not recorded in the books of account.
- In light of the said material the Assessing Officer drew inference that the respective assessee, who purchased bungalow in the said scheme, had paid 'on money'. The cost of the bungalow sold to the assessee was taken by the Assessing Officer at Rs. 11,35,000, whereas the assessee denied having paid anything over and above Rs. 6,12,500 to the builder.
- The Assessing Officer added the amount of Rs. 5,22,500 being unexplained investment made by the assessee for acquiring the bungalow to the assessee's income under section 69.
- The appeals preferred by assessee were dismissed by the Commissioner (Appeals).
- On further appeal, the Tribunal, on facts, held that as per allotment letter and other documentary evidence, the assessee had shown to have paid only Rs. 6 lacs and Rs. 12000 for acquiring the bungalow. Secondly in spite of the search, the revenue authorities could not lay hand on any document which could show that the assessee had paid 'on money'. Thirdly, the Assessing Officer could not extract from the witness that assessee had paid 'on money' in spite of concealed threat in cross examination. The Tribunal, therefore, deleted the addition made under section 69.
- On revenue's appeal.

### Held

- Sub-section (1) of section 260A provides for appeal against the order of Tribunal only on substantial question of law. Substantial means 'having substance, important or essential'. To be a 'substantial', a question of law must be debatable, not previously settled by the law of land or a binding precedent. Therefore, the moot question involved in the instant appeals is whether any ground or reason arises to interfere with the order of the Tribunal. On due consideration of the submissions made at bar, it would not be possible to uphold the contention of the appellant - revenue. The Tribunal gave elaborate reasonings to assail the order of the Commissioner (Appeals) and the Assessing Officer. Thus, the fact remains that the entire issue is based on factual aspects and the Tribunal by giving cogent reasons, came to the conclusion that addition of 'on money' in case of assessee is unjustified

and accordingly, directed the addition of 'on money' to be deleted. The revenue made a futile attempt to demonstrate that the findings of fact recorded by the Tribunal are perverse inasmuch as the Tribunal ought not to have overlooked further examination of witness. This is nothing but an attempt to see that this Court undertakes an exercise to find out whether the Tribunal has committed any error in appreciating the evidence/facts while taking departure on the findings of fact recorded by the Assessing Officer. Needless to say that the first appellate court the second appellate court are within their powers to find out whether the evidence led before the Assessing Officer was genuine and they are also empowered to examine the factual background of the issue with a view to examine whether the evidence led by the assessee was reliable and adjudicated properly. But, by virtue of specific language employed in section 260A this Court cannot undertake such exercise. In the background of the instant case, under these circumstances, there does not exist any ground or reason to interfere with the order of the Tribunal as no question of law, much less any substantial question of law, arises for consideration and no perversity in the conclusion arrived at which give reason to interfere with the impugned orders has been pointed out. Therefore, the findings of fact recorded by the Tribunal are based on appreciation of fact and the appeals deserve no further consideration.

- Under the circumstances, the finding recorded by the Tribunal to the effect that the revenue failed to prove that assessee made undisclosed investment in the bungalows of 'Tulip' Scheme does not give rise to any substantial question of law. The finding regarding non-payment of on money by the assessee is a question of fact and no substantial question of law arises and, consequently, the Tribunal's order deleting addition to income under section 69 does not raise any question of law where, the Tribunal did not find any material evidence to establish that the assessee made investment over and above what was recorded in the return of income filed by the assessee.
- In view of the above, no interference is called for in the present appeals and the same are to be dismissed.